



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2019-0468; FRL-10001-89-Region 7]**

**Air Plan Approval; Iowa; Revisions to Regional Haze Plan and Visibility Requirements in Infrastructure State Implementation Plans for the 2006 PM<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, 2008 Ozone, and 2015 Ozone NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Iowa. This final action will amend the SIP to rely on the Cross State Air Pollution Rule (CSAPR) for certain regional haze requirements, fully approve Iowa's Regional Haze Plan, remove the Federal Implementation (FIP) the state replaced, and approve the Visibility portions of infrastructure SIPs for the 2006 Fine Particulate Matter (PM<sub>2.5</sub>), 2012 PM<sub>2.5</sub>, 2010 Nitrogen Dioxide (NO<sub>2</sub>), 2010 Sulfur Dioxide (SO<sub>2</sub>), 2008 Ozone, and 2015 Ozone National Ambient Air Quality Standards (NAAQS).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0468. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7588; email address [wolkins.jed@epa.gov](mailto:wolkins.jed@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to EPA.

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## **I. What is Being Addressed in this Document?**

On May 14, 2019, the State of Iowa submitted a request to revise the State of Iowa's Regional Haze Plan, changing from reliance on the Clean Air Interstate Rule (CAIR) to reliance on the Cross State Air Pollution Rule (CSAPR) for certain regional haze requirements; removing EPA's Federal Implementation Plan (FIP) for reliance on CSAPR for certain regional haze requirements, convert EPA's limited approval/limited disapproval of Iowa's Regional Haze Plan for the first regional haze planning period to a full approval; and approve the states' submissions addressing the Clean Air Act (CAA or the Act) section 110(a)(2)(D)(i)(II) provision (prong 4) that prohibit emissions activity in one state from interfering with measures to protect visibility in another state of Iowa's infrastructure SIP submittals for the 2006 Fine Particulate Matter (PM<sub>2.5</sub>) 2012 Fine Particulate Matter (PM<sub>2.5</sub>), 2010 Nitrogen Dioxide (NO<sub>2</sub>), 2010 Sulfur Dioxide (SO<sub>2</sub>), 2008 Ozone, and 2015 Ozone NAAQS. The EPA is finalizing approval of these requests.

## **II. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided the Federal Land

Managers the draft rule on February 28, 2019, providing until April 28, 2019, to receive comments and received no comments. The state provided public notice of this SIP revision on March 29, 2019, providing until April 29, 2019 to receive comments and received no comments. The state held a public hearing on April 29, 2019 and received no comments. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

### **III. The EPA's Response to Comments**

The public comment period on the EPA's proposed rule opened August 22, 2019 the date of its publication in the **Federal Register** and closed on September 23, 2019. During this period, the EPA received one comment.

*Comment:* EPA must immediately retract this proposal per the decision made by the D.C. Circuit Court ruling in Wisconsin, et al v. EPA. As the EPA states in [its] now remanded final rule, the CSAPR Update addresses both the 2008 and 1997 ozone NAAQS in addition to the D.C. Circuit's 2015 remand of the CSAPR rule.

"This CSAPR Update also is intended to address the July 28, 2015 remand by the United States Court of Appeals for the District of Columbia Circuit of certain states' original CSAPR phase 2 ozone season NO<sub>x</sub> emission budgets. In addition, this rule updates the status of certain states' outstanding interstate ozone transport obligations with respect to the 1997 ozone NAAQS, for which the

original CSAPR provided a partial remedy.” And so, until EPA addresses the D.C. Circuit’s 2019 remand of the CSAPR Update rule, EPA can’t rely on a CSAPR better than BART reasoning until EPA fully [addresses] the remand of CSAPR Update[.]

*Response:* The EPA disagrees with this comment. BART-eligible electric generating unit (EGU) sources in Iowa may satisfy best available retrofit technology (BART) requirements for a given visibility pollutant by participating in any of the Cross-State Air Pollution Rule (CSAPR) trading programs for that pollutant, as authorized by the regional haze rule, 40 CFR 51.308(e)(4). Iowa’s covered EGUs not only participate in the CSAPR Update ozone season NO<sub>x</sub> trading program for transport of ozone but also the CSAPR annual NO<sub>x</sub> and SO<sub>2</sub> trading programs for transport of fine particulate matter (PM<sub>2.5</sub>) under the 1997 and 2006 national ambient air quality standards (NAAQS) for PM<sub>2.5</sub>. See 40 CFR 52.38(a)(2)(i), 52.39(b); see also CSAPR Final Rule, 76 FR 48208 – 76 FR 48213 (August 8, 2011). Thus, regardless of whether Iowa’s EGUs participate in the CSAPR Update ozone season NO<sub>x</sub> trading program, their participation in the CSAPR annual NO<sub>x</sub> trading program would continue to be sufficient to satisfy BART requirements for NO<sub>x</sub> as a visibility pollutant.

EPA initially determined that participation in either ozone-season or annual NO<sub>x</sub> trading programs would satisfy BART for NO<sub>x</sub> in concluding that participation in the trading programs

established under CAIR, the predecessor to CSAPR, could serve as BART alternatives. See BART Guidelines Final Rule, 70 FR 39104 - 70 FR 39143 (July 6, 2005); see also 71 FR 60612 - 71 FR 60623 (October 13, 2006) (clarifying EPA's 2005 determination that "participation in either the annual or seasonal CAIR NO<sub>x</sub> cap-and-trade program is a necessary condition for relying on EPA's determination that States can substitute CAIR for BART for NO<sub>x</sub>"). When CSAPR replaced CAIR, EPA conducted a BART-alternative analysis similar to the BART-alternative analysis conducted for CAIR, and again specifically assessed whether participation in either the CSAPR ozone-season NO<sub>x</sub> trading program or the CSAPR annual NO<sub>x</sub> trading program would be sufficient to satisfy the BART-alternative analysis for NO<sub>x</sub>; EPA again concluded that either would suffice. See 77 FR 33642 at 77 FR 33650 - 77 FR 33651 (June 7, 2012). Thus, the current text of the regional haze rule continues to provide that a state "subject to a trading program [under CSAPR] need not require BART-eligible fossil fuel fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State," 40 CFR 51.308(e)(4) (emphasis added). This provision recognizes that participation in either the ozone-season or annual NO<sub>x</sub> trading program would satisfy BART. So long as Iowa's BART-eligible fossil-fuel fired EGUs are subject to CSAPR's annual NO<sub>x</sub> trading program, their

participation in the ozone-season NO<sub>x</sub> trading program—or the status of the CSAPR Update ozone-season NO<sub>x</sub> program more generally—is not relevant for determining that these sources' BART obligations for NO<sub>x</sub> are satisfied.

Further, if it so chose, Iowa could continue to rely on the CSAPR Update (81 FR 74504, October 26, 2016) ozone-season NO<sub>x</sub> trading program to satisfy best available retrofit technology (BART) requirements for Iowa's BART-eligible electric generating units (EGUs), as authorized by 40 CFR 51.308(e)(4). The court's decision in *Wisconsin v. EPA*, No. 16-1406 (D.C. Cir. September 13, 2019), did not vacate the CSAPR Update, and that rule, including Iowa's ozone-season NO<sub>x</sub> budget, remains in place. The Wisconsin decision upheld the CSAPR Update rule in most respects, but held the rule was inconsistent with the CAA to the extent it failed to require upwind states to eliminate their significant contributions to downwind ozone problems in accordance with the downwind areas' ozone attainment deadline. *Wisconsin*, Slip Op. 13. The court remanded the Update rule but expressly declined to vacate it in order to avoid "substantial disruption" and in recognition of the potential "harm to the public health and environment" vacatur could cause. *Id.* at 59.

At this time, the CSAPR Update rule remains in operation, and it is entirely speculative—not to mention improbable in light of the court's reasoning—that on remand, the CSAPR

Update's ozone-season NO<sub>x</sub> budget for any state would become less stringent, much less in a way that could impact EPA's analysis of the CSAPR program as a BART-alternative.

Finally, the commenter states that the CSAPR Update rule addressed not only the 2008 ozone NAAQS but also the remand of some of the original CSAPR ozone-season NO<sub>x</sub> budgets for the 1997 ozone NAAQS in *EME Homer City Generation v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). See CSAPR Update Final Rule, 81 FR 74504 at 81 FR 74507 (October 26, 2016). The relevance of this observation to the present action is not clear. Iowa's was not one of the original CSAPR ozone-season NO<sub>x</sub> budgets remanded due to potential over-control in *EME Homer City*, see 795 F.3d 118, 138. Further, in the *Wisconsin* case reviewing the CSAPR Update rule, no party challenged the portion of that rule resolving the remanded budgets from *EME Homer City*, and there is no reason to believe those determinations would be revisited or reopened on the remand in *Wisconsin*.

For all these reasons, the *Wisconsin* decision and remand of the CSAPR Update does not alter or affect Iowa's ability to continue to rely on participation in CSAPR trading programs to satisfy BART for NO<sub>x</sub> and SO<sub>2</sub> for its BART-eligible sources covered by the CSAPR trading programs.

#### **IV. What Action is the EPA Taking?**

The EPA is amending the Iowa SIP to relying on CSAPR for



certain Regional Haze requirements in accordance with the CAA and the Regional Haze Rule (40 CFR 51.308(e)(4)); withdrawing the FIP relying on CSAPR to satisfy those requirements; fully approving Iowa's regional haze SIP for the first planning period; and approving the prong 4 portions for each of the six NAAQS identified above.

## **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

*C. Paperwork Reduction Act*

This action does not impose an information collection burden under the PRA. This action approves state plans that do not impose any information collection.

*D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action approves state plans that rely on no new requirements on any entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. There are no Indian reservation lands in Missouri. Thus, Executive Order 13175 does not apply to this rule.

*H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state program and approves a state action implementing a federal standard.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

*L. Determination Under Section 307(d)*

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d), as it revises a FIP under CAA section 110(c).

*M. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action [is/is not] a "major rule" as defined by 5 U.S.C. 804(2).

*N. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action, Revisions to Regional Haze Plan and Visibility Requirements in Infrastructure State Implementation Plans for the 2006 PM<sub>2.5</sub>, 2012 PM<sub>2.5</sub>, 2010 NO<sub>2</sub>, 2010 SO<sub>2</sub>, 2008 Ozone, and 2015 Ozone NAAQS may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 25, 2019.

Andrew R. Wheeler,  
Administrator.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart Q-Iowa**

2. In §52.820, the table in paragraph (e) is amended by adding paragraph (e)(52) to read as follows:

**§52.820 Identification of plan.**

\* \* \* \* \*

(e) \*\*\*

**EPA-APPROVED IOWA NONREGULATORY PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
* * * * *				
(52) Sections 110 (a) (2) Infrastructure Prong 4 Requirements for the 2006 Fine Particulate Matter, 2012 Fine Particulate Matter, 2010 Nitrogen Dioxide, 2010 Sulfur Dioxide, 2008 Ozone, and 2015 Ozone NAAQS.	Statewide	1/17/2013; 7/28/2013; 7/29/2013; 7/29/2013; 12/22/2015; 11/30/2018; 5/14/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	This action approves the following CAA elements: 110 (a) (2) (D) (i) (II) - prong 4. [EPA-R07-OAR-2019-0468; FRL-10001-89-Region 7.]

3. Section 52.842 is revised to read as follows:

**§52.842 Visibility protection.**

The requirements of section 169A of the Clean Air Act are met because the Regional Haze plan submitted by Iowa on March 25, 2008 and supplemented on May 14, 2019, includes fully approvable measures for meeting the requirements of the Regional Haze Rule including 40 CFR 51.308(d)(3) and 51.308(e) with respect to emissions of NO<sub>x</sub> and SO<sub>2</sub> from electric generating units.

[FR Doc. 2019-26040 Filed: 12/2/2019 8:45 am; Publication Date: 12/3/2019]